

**Letter of Findings: 65-20200121
Oversize/Overweight Penalty
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Although Motor Carrier indicated that it inadvertently relied on customer's bill of lading as well as customer's faulty scale, the Department disagreed that Motor Carrier was entitled to an abatement of the Department's oversize/overweight penalty.

ISSUE

I. Oversize/Overweight Penalty - Assessment.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that it is entitled to an abatement of the Department's assessment of an "oversize/overweight" civil penalty on the ground that the overweight violation was attributable to its customer's error in weighing and dispatching Taxpayer's vehicle.

STATEMENT OF FACTS

Taxpayer is an Indiana trucking company. In August of 2018, one of Taxpayer's vehicles was stopped by the Indiana State Police ("ISP") on highway I-70 in Wayne County. The ISP found that Taxpayer's vehicle exceeded the maximum allowable weight and had not obtained a current overweight/oversize permit. The ISP found that the vehicle weighed 81,720 pounds which was 1,720 pounds in excess of the maximum allowable load. Based on a report provided by the ISP, the Indiana Department of Revenue ("Department") issued a \$5,000 civil penalty. Taxpayer disagreed with the penalty and submitted a protest to that effect. Along with its protest Taxpayer included a Protest Submission Form opting to waive its right to an administrative hearing. Therefore, this resulting Letter of Findings is based on information available to the Department.

I. Oversize/Overweight Penalty - Assessment.

DISCUSSION

Taxpayer protests the imposition of the \$5,000 penalty on the ground that it was unaware that its vehicle weighed in excess of the allowable weight. To the contrary, Taxpayer points out that its customer not only provided Taxpayer with a bill of lading listing the weight as 42,803 pounds; customer itself weighed the vehicle at the time it was loaded and verified that the vehicle was within the legal limit.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "Except as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, "[A]n owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway in Indiana a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required but fail to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a Motor Carrier "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 characterizes both fees and penalties stemming from IC Art. 9-20 violations as a "listed tax." According to IC § 9-20-18-14.5(a)(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Motor Carrier a No Permit Civil Penalty for being overweight of the allowable axle weight in violation of IC § 9-20-4-1. In addition, the Department records demonstrate that Taxpayer did not apply for and the Department did not approve and issue an oversize permit to Taxpayer.

Taxpayer maintains that the overweight violation and failure to obtain a permit was inadvertent and that if there is any fault to be laid, it is at the foot of its customer who provided an incorrect weight ticket. In addition, Taxpayer indicates that it has already paid a \$200 local penalty assessed at the time of the overweight violation.

As referenced above, civil penalties imposed under IC § 9-20-18-14.5 are in addition to other civil penalties that may be imposed under IC Titles 8 and 9. Therefore, the \$200 citation issued by the ISP does not preclude the Department from imposing the No Permit Civil Penalty in question. As to the amount of the proposed assessment, the Department issues civil penalty amounts as prescribed by IC § 9-20-18-14.5. IC § 9-20-18-14.5(c) provides that "A person who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation."

Although Taxpayer - as it maintains - may well have operated in good faith and in reliance on the accuracy of its customer's weight scale, it is the motor carrier who bears ultimate responsibility for the operation of its vehicle on this state's highways. Taxpayer is unable to agree that Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of establishing that the assessment was "wrong."

FINDING

Taxpayer's protest is respectfully denied.

August 11, 2020

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